

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Michael J. Neal, Doug Dietz, and Daniel R. Smith
Serial No.: 10/828,836
Filing Date: April 21, 2004
Title: "GAS CYLINDER WARMER WITH VARIABLE
WATTAGE SELF REGULATING HEATER"
Examiner: tbd
Art Unit: tbd
Attorney Docket: 1505800-050745

PETITION FOR FILING BY OTHER THAN ALL THE INVENTORS UNDER 37 C.F.R. 1.47(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Co-Inventors Michael J. Neal and Doug Dietz hereby petition the Commissioner to accept the filing of the above-identified U.S. Patent Application by other than all of the inventors.

The present application for patent has three co-inventors. Two of the co-inventors join the present application while one of the co-inventors has refused to join the present application. A Statement of Facts signed by Domenic Federico, president/CEO of BH Thermal Corporation is attached hereto providing proof of the pertinent facts concerning the refusal of the co-inventor to join in the present application for patent.

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The name and last known address of the co-inventor refusing to sign is as follows:

Daniel R. Smith

39348 Polo Club Drive, Apt. 204

Farmington Hills, MI 48335

The invention was developed by the co-inventors, Michael J. Neal, Doug Dietz, and Daniel R. Smith, within the scope of their employment while they were employed as engineers by BH Thermal Corporation. Daniel R. Smith subsequently ceased employment with BH Thermal Corporation. Daniel R. Smith refuses to take any action beneficial to BH thermal Corporation including joining the present application and assigning the invention, patent application, and any patent which issues thereon to BH Thermal Corporation. The other two co-inventors joined the present application and expressly assigned all rights to the invention, patent application, and any patent issuing thereon to BH Thermal Corporation, Inc. A copy of the Assignment is attached.

Upon information and belief, based on the precedent which is discussed below, BH Thermal Corporation is entitled to clear title to the invention, patent application, and any patent which issues thereon.

The Supreme Court of the United States in *Solomons v. U.S.*, 26 Ct. Cl. 620, 137 U.S. 342, 346 11 S. Ct. 88, 34 L. Ed. 667 (1890), held:

If one is employed to devise or perfect an instrument, or a means for accomplishing a prescribed result, he cannot, after successfully accomplishing the work for which he was employed, plead title thereto as against his employer. That which he has been employed and paid to accomplish becomes, when accomplished, the property of the employer. Whatever rights as an individual he may have had in and to his inventive powers, and that which they are able to accomplish, he has sold in advance to his employer.

It is clear that an employee who is paid to develop an invention comes within the scope of the language cited.

Because each of the co inventors, including Daniel R. Smith, were employed to invent by BH Thermal Corporation at the time the present invention was developed, the invention belongs

to BH Thermal Corporation and each individual co-inventor, including Daniel R. Smith, who contributed to the development of the invention, has a duty to jointly execute an application for patent covering the invention and to assign the invention, patent application, and any patent which issues thereon to BH Thermal Corporation

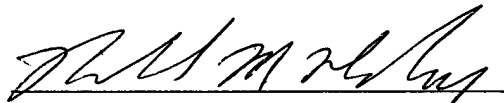
In view of the refusal of co-inventor Daniel R. Smith to execute the papers required for filing the present patent application, co-inventors Michael J. Neal and Doug Dietz are believed to be entitled to make such application on behalf of and as agent for their co-inventor Daniel R. Smith.

If there are any fees resulting from this communication, please charge same to our Deposit Account No. 16-2326.

Respectfully submitted,

PORTER, WRIGHT, MORRIS & ARTHUR LLP

January 7 2005



Richard M. Mescher, Reg. No. 38,242

Porter, Wright, Morris & Arthur
41 South High Street
Columbus, OH 43215-6194

**BEST AVAILABLE COPY****PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Serial No.: 10/828,836

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Title: "GAS CYLINDER WARMER WITH VARIABLE
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Statement of Facts UNDER 37 C.F.R. 1.47(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

1. I, Domenic Federico, am President and CEO of BH Thermal Corporation, a corporation of the state of Delaware, having a principle place of business at 1055 Gibbard Avenue, Columbus, Ohio 43201.
2. The subject of the above-identified patent application, as well as U.S. provisional patent application 60/464,833 filed on April 22, 2003, was invented by Michael J. Neal, Doug Dietz and Daniel R. Smith while each were employed at BH Thermal Corporation and was invented within the scope of their employment.
3. Each of the inventors, Michael J. Neal, Doug Dietz and Daniel R. Smith, are obligated by employment agreements to assign the subject of the above-identified patent application to BH Thermal.

4. Between the date of filing the provisional application (April 22, 2003) and the date of filing the above-identified patent application (April 21, 2004), Mr. Smith resigned from his employment as Vice President-Engineering at BH Thermal Corporation. Mr. Smith left employment at BH Thermal Corporation on less than favorable terms.

5. Mr. Smith explicitly stated to me that neither I, nor anyone else at BH Thermal Corporation, were to contact him for any reason whatsoever. He also expressly stated that he would do absolutely nothing further to help BH Thermal Corporation.

6. I interpret the conduct of Mr. Smith as a clear indication that he is refusing to join the above-identified patent application. In view of Mr. Smith's actions/non-actions, it makes no sense to continue efforts to have Mr. Smith join the above-identified patent application or provide an express refusal.

7. The last know address of Mr. Smith is 39348 Polo Club Drive, Apt. 204, Farmington Hills, MI 48335.

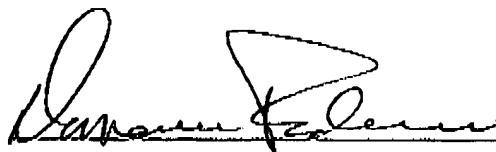
8. Mr. Neal and Mr. Dietz have timely signed declaration and assignment documents.

9. BH Thermal Corporation must respond to a Notice of Missing Parts mailed July 8, 2004 for the above-identified patent application, and it is therefore necessary to immediately file this patent application with less than all the inventors in order to protect BH Thermal Corporation's legitimate rights in the United States and foreign countries and to prevent irreparable damage to BH Thermal Corporation.

10. All statements made herein of my own knowledge are true and all statements made herein on information and belief are believed to be true and I understand that will false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing therefrom.

Respectfully submitted,

December ~~29~~²⁹ 2004

A handwritten signature in black ink, appearing to read "Domenic Federico", written over a horizontal line.

Domenic Federico
President/CEO
BH Thermal Corporation
1055 Gibbard Avenue
Columbus, OH 43201

ASSIGNMENT

Whereas, we, **Michael J. Neal, Doug Dietz, and Daniel R. Smith** have jointly invented a certain new and original invention for a "**GAS CYLINDER WARMER WITH VARIABLE WATTAGE HEATER**", for which we are submitted U.S. Patent Application Number 10/828,836 on April 21, 2004 (Porter, Wright, Morris & Arthur Docket No. 1505800-050745);

And whereas, **BH Thermal Corporation** a corporation duly organized and existing under the laws of the state of Delaware and having a principle place of business at 1055 Gibbard Avenue, Columbus, Ohio 43201, is desirous of acquiring the entire right, title and interests in, to and under said invention and said patent application, any continuing applications, continuations-in-part, divisional applications, refiled or reissue applications made in the United States of America and all other Nations which may result from said invention and information disclosed in said application, and any and all patents which may be issued therefrom;

Now, therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, we, **Michael J. Neal, Doug Dietz, and Daniel R. Smith**, do hereby sell, assign and transfer to **BH Thermal Corporation**, the entire right, title and interest, in and to our invention of a "**GAS CYLINDER WARMER WITH VARIABLE WATTAGE HEATER**", said application for patent, the invention therein described, and all rights appurtenant thereto and in all our applications related thereto, including each of the following: the right to apply for any patent for said invention in the United States of America and in any and all other nations, any and all other applications for patent on said invention including all divisional, renewal, substitute and continuation applications based in whole or in part upon said invention or upon said application or related thereto; any and all patents that may issue thereon in the United States and other Nations and any and all reissues, extensions, renewals, divisions, or continuations of patents granted for said inventions or upon said applications, to the full end of the term or terms for which said patent may be issued; and every priority or other right accorded by every international convention, treaty or agreement that is or may be predicated upon or arise from said invention, application and other applications or patent therefor, all to be held and enjoyed by **BH Thermal Corporation**, its successors and assigns, all the same as we would have held and enjoyed had this Assignment not been made.

We hereby authorize and grant the right to **BH Thermal Corporation**, to file and prosecute patent applications in any or all countries on all or any part of said invention in our names or in the name of **BH Thermal Corporation**, or otherwise, as **BH Thermal Corporation** may deem advisable under any international convention, treaty, or agreement or otherwise.

We hereby request and authorize the Commissioner of Patents and Trademarks of the United States and the empowered officials of all other countries to grant, issue and

transfer any patent for said invention to **BH Thermal Corporation** as assignee of the entire right, title and interests therein, in accordance with this instrument of assignment.

We hereby represent and warrant that there are no outstanding rights or interest inconsistent with the rights and interests granted herein; we covenant that we will not execute, grant, or transfer any rights or interests inconsistent herewith, we bind ourselves, our heirs, executors, administrators and legal representatives to execute and deliver to **BH Thermal Corporation**, its successors and assigns, any further documents or instruments and to perform any and all acts that may be deemed necessary to enable it, its successors and assigns, to file patent applications for patents for said invention in any country in which it may elect to file such application, and to vest in **BH Thermal Corporation**, its successors and assigns, the title herein conveyed and intended to so be, and to enable such title to be recorded in the United States and each Nation in which each such application may be filed so that any patent issued thereon shall be issued to **BH Thermal Corporation**, its successors and assigns; and we further covenant and agree, for ourselves and our executors, administrators and legal representatives, that we and they will, upon request, communicate to **BH Thermal Corporation**, its successors and assigns, any facts relating to said invention and the history thereof, known to us or them and that we and they will testify as to the same in any proceeding, interference or litigation when requested to do so by **BH Thermal Corporation**, its successors and assigns.

First Inventor:

Michael J. Neal

Inventor's Signature:

Michael J. Neal

Date Signed:

12/8/04

Second Inventor:

Doug Dietz

Inventor's Signature:

Doug Dietz

Date Signed:

12/08/04

Third Inventor:

Daniel R. Smith

Inventor's Signature:

Date Signed:
